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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/489,539	01/21/2000	Helen Viazmensky	DEXNON/096/US	5964

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EXAMINER

GUARRIELLO, JOHN J

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 08/14/2002

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/489539

Applicant(s)

Viazmasky

Examiner

John Guarnelli

Group Art Unit

1771

— The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address —

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 4/4/2002, 4/22/2002, 5/17/2002

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-20 is/are pending in the application.

Of the above claim(s) 15 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-14, 16-20 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____

☐ Copies of the certified copies of the priority documents have been received

in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☒ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

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DETAILED ACTION

15. The Examiner acknowledges papers # 3-5, the extension of time and amendment of 4/4/2002, non-compliant letter of 2/22/2002, and the supplemental amendment of 5/17/2002.

16. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restriction

17. The Examiner acknowledges the affirmation of the Restriction requirement and the election of Group I, claims 1-14, and 16-20. Claim 15 is withdrawn as to a non-elected invention of Group II. Applicant's traversal is noted and has been considered, but is not persuasive because Group II is drawn to divergent subject matter as noted by classification, class 426. The Restriction is made final for reasons of record.

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Claim Rejections - 35 USC § 102

18. Claims 1-4, 9-11, 16-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Gbur et al. 6,139,883.

Rejection is maintained substantially as in paper # 2 of 12/6/2001.

Applicant's arguments regarding layers versus phase has been considered, but they are not persuasive because even though applicant can be his own lexicographer, it is the Examiner's position that layer and phase are equivalent concepts of the claimed invention, especially after reviewing the instant specification that explains applicant's product is a multilayer product, thus a phase is a layer, claim 9. Moreover, applicant's claims do not exclude other layers, thus a single layer as recently amended can read on a single layer of the prior art. Regarding applicant's argument of the almost verbatim repetition of the claim, and then applicant concludes the prior art does not disclose these limitations of the claims, it is the Examiner's position that Rule 37 C.F.R. 1.111(b) requires that applicant must "distinctly and specifically point out errors" in the examiner's action. Furthermore, arguments or conclusions of

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attorney cannot take the place of evidence, In re Cole, 51 CCPA 919, 326 f.2D 769, 140 USPQ 230 (1964); In re Schulze, 52, CCPA 1422, 346 F.2d 600, 145 USPQ 716 (1965).

Claim Rejections - 35 USC § 103

19. Claims 1, 5, 6, 7, 8, 12-14, 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gbur et al. 6,139,883 in view of Heinrich et al. 5,601,716.

Rejection is maintained substantially as in paper # 2 of 12/6/2001.

Applicant's arguments regarding there is no suggestion to combine the references has been considered but is not persuasive because Gbur describes fibrous porous web materials which have the same utility, beverage infusion bags, (see abstract;column 1, lines 6-7), and Heinrich describes multilayer web materials which can be used in beverage infusion bags, (column 1, lines 31-34). Furthermore, regarding the argument that the suggestion to combine references must be found in the references has been considered but is not

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persuasive because the test for combining references is what the references as a whole would have suggested to one of ordinary skill in the art, both references describes the same utility as noted above in this paragraph (beverage infusion bags), In re Sheckler, 168 USPQ 716 (CCPA 1971); In re McLaughlin 170 USPQ 209 (CCPA 1971). The claimed invention would still be obvious to one of ordinary skill in the art. Regarding claim 6, Iwahori, 3,950,473 describes microfibular structure and one of ordinary skill in this art would be able to optimize the amounts in the web material, (column 9, lines 1-68).

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first

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reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Guarriello whose telephone number is 703-308-3209. The examiner can normally be reached on Monday to Friday from 8 am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (703) 308-2414. The fax phone number for the organization where this application or proceeding is assigned is 703-305-5408.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



John J. Guarriello:gj

Patent Examiner

August 2, 2002



TERREL MORRIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1700